

IN THE MATTER OF	:	BEFORE THE
SOCCER ASSOCIATION OF	:	HOWARD COUNTY
COLUMBIA, INC.	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-036C

.....

DECISION AND ORDER

On January 25, 2010, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of the Soccer Association of Columbia, Inc. ("SAC"), to enlarge and modify an approved Outdoor Athletic Facilities conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, filed pursuant to Sections 131.J of the Howard County Zoning Regulations (the "Zoning Regulations").¹

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Andrew Robinson, Esquire, represented the Petitioner. James Carlan, Peter Stone, and Mickey Cornelius testified on behalf of the Petitioner. Michael Watterson, Scott McVicker, Mike Liber and Antonio Salazar testified in support of the Petition. William

¹ Pursuant to Section 131.J of the Zoning Regulations, the Hearing Authority may permit the enlargement or alteration of an approved conditional use in the specified districts under the provisions of these regulations. In evaluating the enlargement or alteration, the Hearing Authority shall make all of the required findings applicable to the entire conditional. In this case, I am to evaluate the Petition for compliance with Sections 131.B and 131.N.6.

Lauer, Nancy Lauer and Ron Rong Loi testified in opposition to the Petition, as did Christina Delmont-Small, who acted as the general spokesperson for the community.

A Preliminary Matter

At the outset of the hearing, SAC proposed to amend the Petition to request approval to phase in the proposed conditional use. In Phase I, the Petitioner will obtain all necessary permits and approvals and shall commence the use of those portions of the conditional use outside the Area of Expansion (as shown and depicted on the Conditional Use Plan) within two years of the date of the Decision and Order. In Phase II, the Petitioner will obtain all necessary permits and approvals and commence the use of the "Area of Expansion" (as shown and depicted on the Conditional Use Plan) within six years of the date of the Decision and Order (Petitioner's Exhibit 1A).

Hearing Examiner Rule 9.5 requires me to make a determination as to whether "the amendment proposes a use that is likely to adversely impact vicinal properties." Because the amendment concerns only the timing of the proposed expansion, I concluded the amendment was unlikely to impact vicinal properties adversely.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 53.13-acre, irregularly shaped subject property is located in the 2nd Election District on the west side of Centennial Lane opposite Maxine Street. It is referenced on Tax Map 30 Block 1, as Parcel 1-A/B, and is also known as 4560

Centennial Lane (the "Property"). The Property is zoned RR-DEO (Rural Residential-Density Exchange Option Overlay).

2. The Property. The Property is the site of the existing Soccer Association of Columbia, Inc.², an outdoors athletics facility approved in Board of Appeals Case No. 01-21C. The existing facility consists of eight soccer fields³, four of which are synthetic and have outdoor lighting, an administrative building, shelters and a large parking lot. The facility is known as Covenant Park. In the Property's northern section is a religious facility (the "Church") approved in Board of Appeals Case No. 01-066C. SAC and the church sharing the parking lot.

3. These improvements lie 850 feet or more from Centennial Lane, past the wooded peninsulas of Parcel B, which largely surrounds the Property. A long, curving driveway running through Parcels A and B provides access to these improvements.

4. Vicinal Properties. Parcel B surrounds all but a small section of the Property and is subject to an agricultural preservation easement. It is improved by a lone single-family detached dwelling in the parcel's southwest area. Wooded stream valleys run north and south in the eastern area and northwest to southwest in the southwest area. Wetlands abut the streams in the eastern and southeast sectors. The northern area adjacent to Centennial Lane and the southwest area are open fields. Beyond Parcel B are additional

² SAC oversees a broad range of soccer activities, team sports, training, clinics, recreational soccer, and special tournaments for persons between three and eighteen years of age.

³ Fields 1 and 2 are a single area, which can be used as two fields. As Mr. Carlan explained, this arrangement--which is proposed to be repeated for the additional multipurpose field--can be used to modify the field size --permitting two or more games—for younger soccer players, who play on smaller fields.

large farm parcels, which are also subject to agricultural preservation easements. Beyond the farm to the north is Centennial High School and Burleigh Manor Middle School, which lie in the R-20 zoning district.

5. Two one-acre, R-20 (Residential-Single Family) zoned lots adjoin the southeast corner of Parcel B. Each lot is improved by a single-family detached dwelling fronting on Centennial Lane.

To the northeast is a vacant RC-DEO zoned parcel, the site of a future public utility electric substation approved in Board of Appeals Case No. 94-12E, which obliged the petitioner to complete the substation by 2003.

To the east, across Centennial Lane, are the R-20 zoned lots improved by single-family detached dwellings fronting on Maxine Street and Centennial Lane. South of these lots is the West Area of Centennial Park.

6. Roads. Centennial Lane at the entrance to the Property has north and southbound through travel lanes, a southbound right turn lane into the Property, and a northbound left turn lane into the Property. There is about 60 feet of paving within a variable width right-of-way. The posted speed limit is 40 MPH.

7. Water and Sewer. The Property is served by public water and sewer facilities.

8. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Rural Conservation." The General Plan Transportation Map depicts Centennial Lane as a Minor Arterial.

9. Zoning History.

- A. Case No. Amended Decision and Order in BA 01-20C⁴
Petitioner: Soccer Association of Columbia, Inc.
Request: Conditional Use for Outdoor Athletic Facilities for eight soccer fields, three pavilions and an administration building.
- B. Case No. BAO1-66C
Petitioner: Covenant Baptist Church of Columbia
Request: Conditional Use for a religious facility
Action: Granted June 25, 2002, subject to the following conditions:
1. The Conditional Use shall be conducted in conformance with, and shall apply only to the proposed religious facility as described in the petition; as described in the Findings of Fact and Conclusions of Law of the final Decision and Order; [and] as depicted on the Conditional Use Plan for the "Covenant Baptist Church" submitted on November 6, 2001.
 2. The proposed Centennial Lane entrance shall be revised to comply with the BA 01-20C plan, and include both an acceleration and deceleration lane, or an alteration to the BA 01-20C plan shall be approved to eliminate the acceleration and deceleration lane and instead use this lane for a through-lane for southbound traffic as shown on Exhibit 1 or as revised by DPZ.
 3. The existing vegetation on the Property to the north and south of the existing driveway shall be retained.
 4. The removal of vegetation for the driveway across Parcel B shall be kept to a minimum. The Petitioner shall specify whether there will be an access easement established on Parcel B for this portion of the driveway, and the petition shall also include this portion of Parcel B within the Conditional Use boundaries.
 5. The Petitioner shall comply with all applicable Federal, State and County laws and regulations.

⁴ Opponents appealed the original Petition to circuit court. The Petition in this case included the remand order from that appeal. The remand instructs the Board of Appeals to consider the settlement agreement entered into between the parties. According to Footnote 1 in the Supplement attached to the Petition, the terms of the settlement included SAC's agreement to remove two fields in the area now comprising the proposed area of expansion and refraining from developing the two fields for three years.

10. The Proposal.

A. Physical expansion – "Area of Expansion." SAC is proposing to expand its facility in the area denoted on the Conditional Use Plan as the "Area of Expansion," which lies south of the driveway and southeast of the lighted fields. The area of expansion is a long, narrow, 1,200+-foot "peninsula" running generally parallel to Centennial Lane and between two wetlands areas in the southeast section of the Property. The easternmost border of this expansion area would lie about 300 feet from Centennial Lane. SAC proposes to extend the driveway to the following uses:

i. A 75-space paved parking lot and associated driveway located southeast of the existing stormwater management facility

ii. A 36-foot by 48-foot, 25-foot (maximum) pavilion shelter constructed to match the existing pavilions, and;

iii. A 210-foot by 540-foot multipurpose athletic field. The multipurpose field will be constructed as a single 210-foot by 540-foot field, which can be used as two smaller athletic fields of smaller size when needed. SAC proposes to construct a 6-8 foot high green chain link fence around the perimeter of the multipurpose field.

B. Proposed Modifications

i). A third, "Winter" season. As approved in BA 01-020C, the athletic facility was to operate during two seasons, a "Spring" season running from April to mid-June and a "Fall" season running from September to mid-November. SAC is now proposing to add a

"Winter" season running from December through February, with weekend games and events only during daylight hours on the synthetic fields.

ii). Additional tournaments and special games ("Tournaments"). BA 01-020C granted approval for three major annual tournaments to be held at the athletic facility: the Columbia Classic Tournament (Labor Day weekend); the Columbia Recreational Tournament (two consecutive Sundays in October), and; the Columbia Invitational Tournament (Memorial Day weekend). The Petition requests approval to remove the limit on permitted tournaments to allow for unlimited tournaments, "to schedule soccer related events and tournaments year round, as needed, with annual tournaments to be scheduled from March through November."

During the hearing, I stated my concern that the open-endedness of this request made it difficult, if not impossible, to assess under both the general criteria to be considered when evaluating a proposed conditional use, and, importantly, the specific criteria of the conditional use category. SAC therefore agreed to limit the total number of tournaments to nine. Because SAC holds some tournaments on both weekend days or on multiple weekends, there would be nine tournaments over 24 days, with twelve tournaments on Sundays, as is shown in Table I.

Table I		
Tournaments and Special Events		
Name	Date	Early Sunday Start (Transportation Required)
Major Annual Tournament (all fields in use) ⁵		
Memorial Day	May 29/30	Yes
Recreational "A" Tournament	August 28/29	Yes
Labor Day	September 4/5	Yes
Columbus Day	October 9/10	Yes
November Fall Classic	November 13/14 & 20/21	Yes
Minor Tournaments (not all fields in use)*		
March Mania	March 6/7 & 13/14	No
March Madness	March 20/21 & 27/28	Yes
3v3 Tournament	June 26/27	No
College Showcase Tournament	November 27/28	No
* Synthetic, lighted fields only		

iii). Increasing the Hours of Operation for Tournaments. The BA 01-020C Decision and Order approved the original facility subject to certain hours of operation. SAC is now proposing to increase the hours of operation to permit earlier Sunday start times for tournaments and special events. During these earlier Sunday start times, only persons

⁵ Mr. Carlan testified that SAC would use "all eight fields" during tournament play. The cumulative record suggests that the multipurpose field would also be used, as Mr. Carlan elsewhere stated that this field would not be used for tournament play until 12:30 pm.

attending church would be permitted to park onsite. Table I charts the existing and proposed changes.⁶

Table II						
Proposed Modification: Hours of Operations						
Activities	Season	Days	As Approved in BA 01-020C		Proposed	
			Unlighted Fields	Synthetic Lighted Fields	Unlighted Fields	Synthetic, Lighted Fields
General Activities (Games, Clinics, Practice, Etc.)	Spring & Fall	Monday- Saturday	9:00 am - 7:00 pm or dusk	9:00 am - 10:00 pm	9:00 am - 7:00 pm or dusk	9:00am - 10:15 pm
		Sunday	12:30 am - 7:00 pm or dusk	12:30 am- 10:00 pm	12:30 pm- 7:00 pm or dusk	12:30 pm- 10:15 pm
	Winter	Saturday- Sunday				Daylight hours only
Tournaments And Special Games	No Winter Events	Monday- Saturday	9:00 am - 7:00 pm or dusk	9:00 am - 10:00 pm or dusk	9:00 am- 7:00 pm or dusk	9:00 am or 12:30 pm- 10:15pm
		Sunday	12:30 pm - 7:00 pm or dusk	12:30 am- 10:15 pm	9:00 am * or 12:30 pm- 7:00 pm or dusk	9:00 am * or 12:30pm - 10:15pm

* The early start dates are for tournaments listed in Exhibit 3. The early start date does not apply to the new expansion field, which would not be used until 12:30pm on Sundays.

⁶ This information is drawn from the Supplement to the Petition (Page 12) and Mr. Carlan's testimony that the unlighted fields might be used until dusk, which in late summer could be one or two hours beyond 7:00 pm..

iv). Increasing the Number of Lighted Nights. SAC proposes to extend the number of lighted nights to from 90 to 165 per year. This represents a 55% increase. As proposed, the additions would generally run from mid-March to the end of November, specifically 15 nights in March, 25 in April, 25 in May, 15 in June, no lighted nights in July, 5 in August, 30 in September, 30 in October and 20 in November. According to the Petition, the proposed expansion would effectively extend the season from March through November. During the remainder of the off-season months (mid-June — August), SAC will continue run weekday soccer camps, clinics, and other club training activities.

11. Onsite Parking and Offsite, Alternative Tournament Parking Management.

Volunteers and SAC parents will continue to manage internal parking and circulation. Parents and other drivers sometimes drop members off along the driveway instead of the parking lots. One vehicular accident involving a member occurred. Ms. Small, a SAC parent, expressed concern for the safety of members who parked in the overflow area across the driveway from the proposed multipurpose field.

Concerning the traffic management plan for Sunday tournaments and special events, Mr. Carlan testified that SAC closes the driveway on Sundays and permits only church attendees to park on-site. SAC obtains the necessary permits from the Howard County Board of Education to permit parking at Centennial High School or Burleigh Manor Middle School (to the Property's north). Attendees arrive in buses or car, park at one of the schools, and SAC buses them to Covenant Park.

12. Mr. Carlan further testified that SAC owns or has access to multiple other

soccer fields, including those at Howard Community College, the Olney soccer complex and various Howard County public schools and parks and recreation fields, but that its members and visiting teams (apparently) prefer playing on the superior fields at Covenant Park. He also acknowledged the negative impact of a previous special event on the community (McSoccer), and confirmed SAC would no longer host the event.

13. On-site parking. The BA 01-020C Decision and Order found that SAC had proposed 600 spaces, including those allocated to the church. Peter Stone testified that the facility originally proposed 400 paved and 200 unpaved parking spaces. Note 5 on the Conditional Use Plan states that 457 paved and 65 unpaved spaces were constructed. With the 75-space addition in the new lot, the total number proposed is 597 parking spaces.

14. Mr. Carlan testified to the absence of any complaints about the lights.

15. Scott McVicker, a SAC parent and SAC's VP of Facilities, testified to living near the eastern side of Centennial Park. It was his view that SAC is of enormous benefit to Howard County children. He also testified to SAC reaching out to several area residents to discuss the proposed modifications.

16. Antonio Salazar, who lives about two miles north of the facility, testified to being a coach and SAC administrator. He travels down Centennial Lane on Sunday mornings to attend church and does not observe any traffic problems, except for the now discontinued tournaments.

17. William Lauer, who resides on Centennial Lane across from the soccer fields,

testified that he hears sound from the park and that persons sometimes park along Centennial Lane. During cross-examination, he stated that he also lives near Centennial Park.

18. Nancy Lauer testified that cars park along Centennial Lane and that police or cadets manage traffic. Because many bus drivers do not know the location of the schools, they stop and ask for directions. The buses often arrive at 7:00 or 8:00 a.m. and make a lot of noise. She also testified to frequently hearing the sound of whistles coming from the fields.

19. Mr. Cornelius testified that the proposed modifications would have minimal impact on peak hour traffic.

20. During her cross-examination and direct testimony, Ms. Small pointed out the gap in landscaping along the eastern edge of the Property across from Maxine Street. At my urging, SAC agreed to landscape this area.

21. Ron Rong Loi testified that the bus and motor traffic would have a negative and unsafe impact on the neighborhood.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:⁷

I. Specific Criteria for Outdoor Athletic Facilities (Section 131.N.6)

⁷ My legal conclusions in conditional use petitions invariably begin with an assessment of the general criteria for Conditional uses (Section 131.B) followed by an analysis of the petition's compliance with the specific conditional use category. In this case, however, I am adopting the TSR's tack of beginning with the specific criteria because it more logically addresses our mutual concerns about the proposed modifications and my reasons for approving the petition as conditioned.

The Hearing Authority may grant a conditional use for an outdoor athletic facility, including athletic fields, in an RC zoning district where it complies with six criteria.

a. A conditional use shall not be required for facilities which are reserved for use by residents of a community and their guests, and which are located within neighborhoods or communities where all properties are included within recorded covenants and liens which provide for the operation and maintenance of the facilities.

Section 131.N.6.a is inapplicable.

b. Other athletic or recreational uses accessory to these principal uses are permitted if approved by the Hearing Authority.

The proposed physical expansion would add an additional field to the principal athletic field use and two accessory uses, a parking lot and shelter. For the reasons stated in this Decision and Order, and subject to the conditions of approval I am imposing, the proposed expansion is appropriate.

c. Buildings, parking areas, and outdoor activity areas will be at least 50 feet from adjoining residentially zoned properties other than public road right-of-ways. This buffer area shall not be available for athletic or recreational activities. The Hearing Authority may reduce this setback, if:

- (1) The adjoining land is committed to an agricultural or environmental preservation easement or a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or**
- (2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.**

The proposed building, parking areas and outdoor activity area include the new shelter, a 75-space parking lot and associated driveway, and the multipurpose field. The shelter fully complies with the 50-foot setback requirement. As proposed, the parking lot would be located 32 feet from the eastern portion of Parcel B. The multipurpose field would be sited about 31 feet from the eastern and eastern parts of Parcel B. Parcel B is committed to an agricultural easement. It also provides a significant wooded buffer. A 6-8 foot high green chain link fence would be constructed around the multipurpose field.

Because the adjoining land is committed to an agricultural easement and it is substantially wooded, the reduced setbacks are appropriate, in light of the conditions of approval imposed on the requested modifications and expansion.

d. Adequate landscaping or other acceptable forms of buffering will be provided to screen outdoor uses from residential properties.

Both the existing facility and proposed expansion are well screened and buffered by existing vegetation. Owing to the relative closeness of the proposed expansion area to the overflow parking area to the north, many users are likely to park in this overflow area, which is clearly visible, at least in the winter, from Maxine Street. For this reason the Petitioner has agreed to increase the landscape buffer in this area.

Subject to the condition that the Petitioner reinforce the landscaping in this area with additional landscaping, as to be determined by DPZ, the expanded outdoor uses will be adequately screened.

e. Reasonable standards for hours of operation and a detailed lighting plan shall be proposed by the petitioner and established by the Hearing Authority for each use.

The Lighting Plan. The proposed multipurpose field will not be lit, so no modification to the lighting plan is required.

Reasonable standards for hours of operation—early Sunday mornings. This subsection requires the petitioner to propose, and the Hearing Authority to establish, reasonable standards for hours of operation. What are "reasonable standards for hours of operation?" The plain meaning of word "reasonable" is "agreeable," "not extreme or excessive," "moderate, fair." <http://www.merriam-webster.com/>. The TSR questions the reasonableness of the proposed Sunday morning tournament hours absent concrete information about the number of tournaments. SAC's agreement to limit the number of tournaments is intended in part, on my prodding, to address this concern.

The TSR also has qualms about SAC's deployment of "alternate transportation," to accommodate early Sunday morning tournament play, which it similarly finds to be lacking in specificity. Recognizing this, DPZ recommends the Petitioner provide a "defined transportation plan" to support the parking needed for tournament play, a plan that the community must find acceptable. During the hearing, SAC explained its process of obtaining the church's permission to hold tournaments on Sunday mornings, limiting on-site parking to church attendees only and obtaining Board of Education permits to park buses and cars on the parking lots at Centennial High School and Burleigh Manor Middle School. Parking managers, who apparently include off-duty police officers or

cadets, manage this traffic. Mrs. Lauer testified that buses often arrive at 7:00 or 8:00 a.m. and make a lot of noise because bus drivers do not know the location of the permit parking.

Neither the community nor I find buses traveling through the neighborhood as early as 7:00 a.m. to be acceptable. I am therefore in accord with the TSR's conclusion that the earliest Sunday start time remain at 12:30 p.m. As the TSR puts it, "[t]his is a reasonable start time for most any purpose."

Reasonable standards for hours of operation—Evening, Lighted Fields. According to Table II, SAC desires to expand the number of nights of play on the lighted fields from 90 to 165, and to keep the fields lighted until 10:00 pm. Because the expansion field will not be lit, and absent any evidence in the record that the standards for lighted nights, as managed, are unreasonable, I conclude the proposed increase is appropriate. To ensure consistency with the field lighting plan approved in BA 01-020C, I am requiring SAC to turn off all field lights by 10:15 p.m.

Reasonable standards for hours of operation—Evening, Unlighted Fields. The 7:00 p.m./dusk ending time for unlighted fields, as proposed in the Supplement to the Petition and set forth in Table II, is a reasonable ending time for this recreational use.

Reasonable standards for hours of operation—the Winter Season. The proposed Winter season will be limited to weekend play on the synthetic fields, which are some distance from area residences. No outdoor lighting is required because fields will be used

only during daylight hours, with a 12:30 p.m. start time. Given the limited use of the Site during the Winter season, the proposed hours of operation are reasonable.

f. Outdoor sound amplification will be permitted only if it will not constitute a nuisance for residential properties in the vicinity. The petition must indicate the purposes of proposed amplification (such as announcing sports events, safety announcements, or entertainment), hours of use and the maximum noise level at the property lines.

Mr. Carlan clarified that SAC does not use outdoor sound amplification on the fields. It is used near the main building for awards ceremonies and membership gatherings only.

II. General Criteria for Conditional Uses (Section 131.B)

A. Consistency with the General Plan

Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

General Plan Policies. The General Plan designates the area as Rural Conservation. As a general rule, a specific conditional use category is appropriate to the land use for the area when the use complies with the conditional use criteria and/or is approved subject to appropriate conditions to ensure compliance. Subject to the conditions of approvals and/or limitations on the proposed modifications, I conclude the proposed expansion and modification of the facility is harmonious with the General Plan.

The Nature and Intensity of the Use. In this case, the proposed use is an outdoor athletic facility generally consisting of soccer games, training, tryouts and tournaments. SAC desires to intensify its programming by adding: a new multipurpose field, shelter, parking lot and driveway; increasing by 55% the number of lighted nights (from 90 to 165), increasing the number of tournaments to nine, and adding a Winter season.

In my view, these proposed changes would greatly intensify the recreational use on the Site, based on the proposed modifications and the additional field. Importantly, the proposed intensification in use as proposed is dependent on the off-site use of land, the Sunday morning tournament use of the Centennial High School and Burleigh Manor Middle School parking lots for off-site parking.

Because I am denying the request for early Sunday morning tournament play, to a large degree because of the necessary off-site parking, the intensification of use will not bleed into the community. With the elimination of the early Sunday morning tournament start times, the nature and intensity of the use is softened, which persuades me that the proposed changes are appropriate. The proposed physical expansion of the use will not

involve outdoor lighting, nor will it be used during the Winter season. There will be a gradation in the intensity of use as the Site nears Centennial Lane.

The size of the site in relation to the use. The size of the Property and the Site are appropriate. The current use appears to have operated successfully for many years even with two uses on the Property. The Site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. The Site will be accessed from an existing driveway off Centennial Road and the driveway's location appears to have adequate sight distance.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed modifications and physical expansion would be combined with a permitted use, the religious facility approved in BA 1-66C. Subject to the denial of the early Sunday morning hours, the proposed changes are appropriate.

2. Adverse Effect

Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

Any assessment of a conditional use under these criteria initially recognizes that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use.

Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an RC District. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, as subject to the limitations and conditions I am imposing, I conclude the Petitioner has met its burden under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with an outdoor athletic facility in a RC zoning district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

There is no evidence the use would generate inordinate dust, fumes, odors, vibrations, hazards or other physical effects detectable from adjacent properties. Even with the increase in the number of lighted nights, the affected fields are near the main building, which is a considerable distance from Centennial Lane and the residential uses to the east. No lighting is proposed for the Winter season, because all games will end at

dusk. The expansion field will not be lit, nor will the Petitioner use this field in the Winter season.

Although the expanded and modified use will generate noise, as was found in BA 01-20E, there is no evidence that such noise will be inordinate at this particular location, except with respect to the Sunday morning off-site parking for tournaments, which I am denying. It is well buffered and the fields are some distance from neighboring residences. The closest residence is some 300 feet away. I therefore conclude that any inherent operational adverse effects resulting from the proposed conditional use, as approved, will not be greater at the subject site than elsewhere in the zone or applicable other zones, in accordance with 131.B.1.a.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The modified and expanded use involves a new shelter to the north of the proposed multipurpose field. This shelter complies with all bulk requirements, so it will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones, in accordance with 131.B.1.b.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

As noted in Part I, the Zoning Regulations impose no parking requirements on athletic fields. The Board of Appeals BA 01-020C decision and order approved the original use with 600 parking spaces. The SDP reduced the number of parking spaces to 522, or about 65 parking spaces for each field. Because the expansion field parking lot will add 75 parking spaces, the total number of spaces appears adequate. The new parking lot will be properly located and screened from public roads and adjacent properties to minimize adverse impact on adjacent property.

As for the proposed off-site parking need for early Sunday morning tournament play off-site parking, this is indisputably an inordinate, differential, adverse impact, owing to the need for off-site parking and the attendant need for buses to arrive as early as 7:00 or 8:00 a.m. Because this aspect of the proposed modification in use would exacerbate, rather than minimize adverse impacts on adjacent properties I am denying it, for the reasons stated in Part I. Subject to the denial of this aspect of the proposed modification in use, the proposed changes will accord with 131.B.1.c.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing driveways appear to provide safe access, with adequate sight distance, in accordance with 131.B.1.d.

III. Internal Traffic Management

During the hearing, Mr. Carlan and Ms. Christina Delmont-Small spoke to problems with on-site, internal traffic management. Parents and other drivers sometimes drop members off along the driveway instead of the parking lots. One accident occurred. During the hearing, I observed that the addition of the expansion field might result in the increased use of the overflow parking area to the north, across the driveway.

Section 130.C of the Zoning Regulations authorizes the Hearing Authority to deny a change of use if the proposed use "would menace the public health, safety, security, or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood." Although internal traffic management is an issue, it can be resolved. To ensure public safety on-site, I am requiring the Petitioner to consult with DPZ and other appropriate agencies at the site development plan phase to establish the proper public safety resolution to ensure safe crossing across the driveway along the overflow parking area. The resolution may include, but is not limited to, a stop sign, a marked pedestrian walkway, and/or a flashing light alerting motorists to the pedestrian walkway.

ORDER

Based upon the foregoing, it is this **22nd Day of February 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of the Soccer Association of Columbia, Inc., to modify the hours of operations approved in BA 01-020C to include early Sunday morning start hours (9:00 a.m., rather than the approved 12:30 p.m. start time) for tournament play is **DENIED**;

That the Petition of the Soccer Association of Columbia, Inc., to modify and expand the existing outdoor athletic facility is **GRANTED**, as follows:

1. Expansion. The Petitioner's request to expand the recreational use as depicted in the Conditional Use Plan is granted. This expansion includes a 75-space paved parking lot and driveway, a 36-foot by 48-foot, 25-foot high (maximum) pavilion shelter constructed to match the existing pavilions, and a 210-foot by 540-foot, unlighted multipurpose athletic field.

The 50-foot setback is reduced to 32 feet for the parking lot and about 31 feet for the expansion field, as is permitted by Section 131.N.6.c.

2. Three Modifications

a. A third, Winter season. The Petitioner's request to add a third Winter Season running from December through February on the weekends is granted. Only the synthetic fields shall be used during the season. No lights shall be used. The start time shall be 12:30 p.m.

b. Number of tournaments. The Petitioner is permitted to increase the number of tournaments to nine. The nine tournaments shall be held on the days set forth in Table II of this Decision and Order.

c. Increase in the number of lighted nights. The Petitioner's request to increase the number of lighted nights from 90 to 165 is granted, specifically 15 nights in March, 25 in April, 25 in May, 15 in June, no lighted nights in July, 5 in August, 30 in September, 30 in October and 20 in November. The Petitioner shall turn off all field lights by 10:15 p.m.

3. The Petitioner shall augment the landscape buffer along Centennial Lane where the overflow parking is visible from the street. The Petitioner shall consult with DPZ at the site development plan phase to determine the appropriate landscaping.

4. To ensure public safety on-site, the Petitioner shall consult with DPZ and other appropriate agencies at the site development plan phase to establish the proper public safety resolution to ensure safe pedestrian crossing along the driveway by the overflow parking area. The resolution may include, but is not limited to, a stop sign, a marked pedestrian walkway, and/or a flashing light alerting motorists to the pedestrian walkway.

5. Phasing. In Phase I, the Petitioner shall obtain all necessary permits and approvals and shall commence the use of those portions of the conditional use outside the Area of Expansion (as shown and depicted on the Conditional Use Plan) within two years of the date of the Decision and Order. In Phase II, the Petitioner shall obtain all necessary permits and approvals and commence the use of the "Area of Expansion" (as shown and

depicted on the Conditional Use Plan) within six years of the date of the Decision and Order.

6. The Petitioner shall comply with all applicable conditions of this Decision and prior to the commencement of each phased use.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER


Michele L. LeFaivre

Date Mailed: 2/24/10

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.